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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/659,455	09/10/2003	Archibald I. J. Brain	108195.139/LMA-020	4910

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WILMER CUTLER PICKERING HALE AND DORR, LLP  
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BOSTON, MA 02109

EXAMINER

PATEL, MITAL B

ART UNIT PAPER NUMBER

3743

DATE MAILED: 06/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/659,455	Applicant(s) BRAIN, ARCHIBALD I.	
	Examiner Mital B. Patel	Art Unit 3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 September 2003.
- 2a) ☐ This action is **FINAL**.      2b) ☐ This action is non-final.
- 3) ☒ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-10 is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 September 2003 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Drawings*

1. Figure 1C should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.
2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "218" has been used to designate both distal ray and notch. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.
3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "230" has been used to designate both mask and backplate portion. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.
4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the ramp defining the second notch must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Art Unit: 3743

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Specification***

5. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a **single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited.** The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

### ***Allowable Subject Matter***

6. Claims 1-10 are allowed over the prior art of record.

7. The following is a statement of reasons for the indication of allowable subject matter: As to claim 1, the prior art of record does not teach nor render obvious the overall claimed combination of a laryngeal mask airway device having a mask portion that has an epiglottis elevator bar with the distal end of the bar defining an aperture with the bar positionable between a resting position and an open position including one or more optical fibers extending from a proximal end to distal end and a lens connected at the distal end of the fibers with the fibers extending through a first notch defined in an

Art Unit: 3743

airway tube, the lens disposed near the aperture defined by the bar when the bar is in the resting position and the fiber and lens providing a view of a region that extends from the lens through the aperture. As to claim 4, the prior art of record does not teach nor render obvious the overall claimed combination of a laryngeal mask airway device having an airway tube defining a first notch extending along a length of the tube from a location on the tube towards the distal end of the tube, also having a mask portion with a backplate defining a ramp which defines a second notch and one or more optical fibers extending from a proximal end to a distal end and extending through the first notch and the second notch. As to claim 9, the prior art of record does not teach nor render obvious the overall claimed combination of a laryngeal mask airway device having an airway tube defining a first notch extending along a length of the tube from a location on the tube towards the distal end of the tube, also having a mask portion with a backplate defining a ramp which defines a second notch further including a collar disposed adjacent to the ramp with the collar defining an aperture and one or more optical fibers extending from a proximal end to a distal end and extending through the first notch, the second notch, and the aperture defined in the collar. It should be noted that the closest prior art is to Callaghan et al (US 5,477,854 and US Re.35,531) which teaches the use of a scooping instrument (optical fibers). However, Callaghan et al fails to specifically teach an apertured elevator bar through which the fibers/lens extend. Callaghan et al additionally fails to teach a second notch defined by a ramp in the backplate as required by claim 4, and finally Callaghan et al fails to specifically teach not only the second notch defined by the ramp in the backplate but also fails to teach an

Art Unit: 3743

apertured collar adjacent the ramp. There is no motivation in the prior art of record to modify the device of Callaghan to arrive at the claimed invention of claims 1, 4, and 9.

### **Conclusion**

8. This application is in condition for allowance except for the following formal matters:

Please see the objections to the drawings and the specification as noted above in the Office Action.

Prosecution on the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

A shortened statutory period for reply to this action is set to expire **TWO MONTHS** from the mailing date of this letter.

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 6626169, US 6050264, US 5988167, US 5682880, US Re.35531, US 5642730, US 5584290, US 5477851, US 5285778, US 5193544. US 5174283, US 4850371, US 4846153, and US 4700700.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mital B. Patel whose telephone number is 703-306-5444. The examiner can normally be reached on Monday-Friday (8:00 - 4:30).

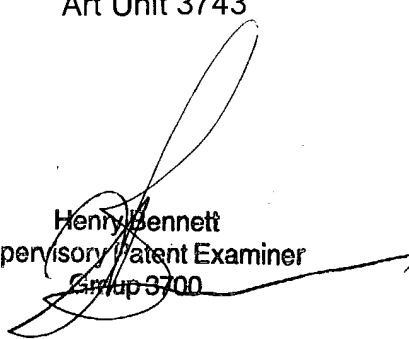
Art Unit: 3743

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on 703-308-0101. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Mital B. Patel  
Examiner  
Art Unit 3743

mbp

  
Henry Bennett  
Supervisory Patent Examiner  
Group 3700